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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,334	12/20/2001	David William Koenig	KCC 4789	3247

321 7590 07/01/2003

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

CHOI, FRANK I

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 07/01/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/029,334

Applicant(s)

KOENIG ET AL.

Examiner

Frank I Choi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 23-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 43-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4,5. 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election of Group I, claims 1-24 and 43-46 and mannitol in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 1-22 and 43-46 read on the elected invention, accordingly, claims 23-42 will be withdrawn from consideration as directed to non-elected inventions.

Response to Amendment

Examiner notes for further reference that currently amended claims should be marked up showing deletions by using square brackets and additions by using underlining. The amendment has been entered notwithstanding the same as it is obvious that the term "process" was replaced with "product" in currently amended claims 45 and 46. Examiner suggests that Revised 37 CFR 1.121 and related material which are available on the USPTO web site be reviewed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5,10-12,15-18,43-~~46~~ are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Foster (US Pat. 3,406,015).

Foster expressly discloses filter paper containing a complex of mannitol and hydrogen peroxide falling within the scope of applicant's claims (Column 2, lines 1-31).

Alternatively, at the very least the claimed invention is rendered obvious within the meaning of 35 USC 103, because the prior art discloses products that contain the same exact ingredients/components as that of the claimed invention. See *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See also *In re May*, 197 USPQ 601, 607 (CCPA 1978).

Claims 1-7,10-18,21-2~~3~~,43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster (US Pat. 3,406,015).

Foster discloses filter paper containing a complex of mannitol and hydrogen peroxide falling within the scope of applicant's claims (Column 2, lines 1-31).

The difference between the prior art and the claimed invention is that the prior art does not expressly disclose about 0.01% to about 5% or about 0.1% to about 1% by weight of the carbohydrate-hydrogen peroxide mixtures. However, the prior art suggest the same as it is known in the art that the mannitol and hydrogen peroxide complex is impregnated onto an absorbant paper or cloth. As such, it would have been well within the skill in the art to modify the prior art as above depending on the amount of complex desired on the absorbant paper or cloth.

Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been taught by the teachings of the cited reference.

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Claims 1-22, 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirk et al. (US Pat. 6,025,186) in view of EP 1 043 273 and DE 3820726.

Kirk et al. disclose a hygiene product, such as diapers, adult incontinence products, training pant, feminine napkins and tampons, containing a composition containing hydrogen peroxide, which composition is effective in reducing malodour arising in soiled hygiene products by killing or inhibiting the growth of microorganisms, such as bacteria, producing compounds responsible for degradation of urine and the like into bad smelling compounds (Columns 2-4).

EP 1 043 273 discloses that mannitol acts as a stabilizer for hydrogen peroxide (Column 1, lines 34-53).

DE 3820726 discloses that encapsulation of hydrogen peroxide increases storage stability of the hydrogen peroxide (See entire reference, especially abstract).

The difference between the prior art and the claimed invention is that the prior art does not expressly disclose the combination of mannitol and hydrogen peroxide in an absorbent product. However, the prior art amply suggests the same as it is known in the art to use hydrogen peroxide in absorbent products and that mannitol and encapsulation increase the stability of hydrogen peroxide. As such, it would have been well within the skill of one of ordinary skill in the art would have been motivated to modify the prior art as above with the expectation that the product would be effective in decreasing malodours and that the hydrogen peroxide would be storage stable.

Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been collectively taught by the combined teachings of the references.

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Conclusion

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machines are (703) 308-4556 or (703) 305-3592.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (703) 308-0067. Examiner maintains a flexible schedule. However, Examiner may generally be reached Monday-Friday, 8:00 am – 5:30 pm (EST), except the first Friday of the each biweek which is Examiner's normally scheduled day off.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. Jose Dees, can be reached on (703) 308-4628. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (703) 308-1235 and (703) 308-0198, respectively.

FIC

June 27, 2003



JOHN PAK
PRIMARY EXAMINER
GROUP 1600